

**North Carolina
Prisoner Legal Services, Inc.**



Motions for Appropriate Relief

Mary Pollard

Executive Director

North Carolina Prisoner Legal Services, Inc.

NCPLS

- Private non-profit law firm
- Contracts with Office of Indigent Defense Services to assist in providing inmates with their constitutional right of meaningful access to the courts.
- 15 attorneys, 13 paralegal/admin staff
- Requests for assistance
 - FY 2014 = 16,282
 - FY 2013=16,952

NCPLS evaluates every request for post-conviction relief it receives.

Calendar year 2013

3,778 post-conviction files opened.

21 MARs filed

Calendar year 2014

2,816 post-conviction files opened through first three quarters.

46 MARs filed year-to-date

Dear Defendant:

Your main concern is that your probation officer recommended having your two suspended sentences run concurrently, but the judge kept them as two sentences running consecutively to each other.

The time passed for you to enter notice of appeal to appeal the probation revocations. However, even if you had appealed in time, I do not believe there would have been any chance at you winning your case on appeal. Your new conviction provided a basis to revoke your probation. Once there are sufficient grounds to revoke probation, a judge has nearly complete discretion or choice in how to structure sentences when probation is revoked. The judge was not required to follow your probation officer's recommendation. Also, because your original plea agreement specified that you would get two sentences, it is common that a judge would keep the two sentences in place at least in part to honor that original plea agreement.

The judge had authority to run your probation revocation sentences consecutively to the sentence you were already serving. If he had done that, you would not have started serving the probation revocation sentences until after you completed the 12-24-month sentence. He was willing, however, to run the probation revocation sentences concurrently to the active sentence you were already serving, which saved you nearly 8 months.

In your case, you were given an aggravated sentence of 25-39 months. While this was the longest sentence you could have gotten, it was still shorter than any sentence you would have received as a habitual felon. As part of your plea bargain, the ADA agreed not to pursue that status, so you did benefit from your plea.

Why do we need Motions for Appropriate Relief?

Types of errors most commonly addressed in MARs:

- Errors in sentencing – improper calculation of prior record level
- Improper habitual felon indictment (eg using juvenile offenses)
- Improper probation revocations – very common in recent months as folks get used to changes from Justice Reinvestment Act.

Wrongful convictions



Are there too many Motions for
Appropriate Relief?

Non-Capital MARs by Year Case Disposed													
(Fee Apps Paid Through 7-10-14)													
		FY14		FY13		FY12		FY11		FY10		FY09	
Account	Charge	No. Cases	Total Fee Awards	No. Cases	Total Fee Awards	No. Cases	Total Fee Awards	No. Cases	Total Fee Awards	No. Cases	Total Fee Awards	No. Cases	Total Fee Awards
PAC Post-Conviction, Non-Capital (not PLS Hearing or Conflict)	MAR	39	\$139,844	60	\$113,170	64	\$159,981	53	\$116,648	51	\$60,987	63	\$116,757
PLS Hearing or Conflict	MAR	24		9		11		6		2			
PD Office		6		15		12		14		11			
PLS (includes some double-count for hearing cases above)		46		21		32		38		25			
Innocenc Projects (max estimate)		5		5		1		2		3			
Total		120		110		120		113		92		63	

Can't quantify:

- MARs by retained counsel
- MARs by “post-conviction companies”
- Pro Se MARs



January 14, 2014

BERTIE CI
P.O. Box 129
Windsor, NC 27983

I would like to take this opportunity to introduce our company — Waymore Post-Conviction, LLC. Waymore Post-Conviction is a full-service company that is dedicated to assisting you reduce your sentence or vacate the conviction. Our services are available to both federal and state defendants.

Post-conviction relief is a very specialized area within the criminal law. The rules governing proceedings under this area of the law are very strict. However, when utilized correctly, they are very effective with reducing sentences or setting aside convictions. In the State of North Carolina defendants have option to pursue their post-conviction efforts in state or federal court. Post-conviction is sought in State court pursuant to Rule 17-3 of North Carolina's rules governing issuance of Writ of Habeas Corpus. Additionally, defendants may also apply for post-conviction relief pursuant to Article 89 (Criminal Procedure Law Act – Chapter 15A). If a defendant opts, for federal relief they must always seek relief under 28 U.S.C. 2255 and in some instances 28 U.S.C. 2241. These are unique motions and require skilled research and drafting to get the relief you may be entitled to under the law.

In most cases, a defendant will have experienced some form of "ineffective assistance of counsel". A claim of ineffective assistance may arise during (1) plea proceedings, (2) trial, or (3) during appeal. There may also be times where it arises in more than one set of proceedings. Claims raised under post-conviction remedies have great success where the defendant is able to show how he/she has been prejudiced.

All too often there are instances where a defendant has exceptional issues; however, the attorney or company drafting the post-conviction application(s) are not skilled to the degree necessary to convince the reviewing court(s) that relief should be granted. When this happens, the defendant (almost) always is unsuccessful on post-conviction.

At Waymore we are skilled at researching the issues and drafting them in such a way that not only does the Court see what we see, the relief we ask for is ultimately granted. We do not guarantee that utilizing our service will overturn a conviction, or even reduce your sentence; however, we do guarantee that ***(1) extreme detail will be given to your case, (2) the research and drafting of all arguments presented to the Court will be on-point to the current laws governing the issue(s), (3) we will go over the issues with our client(s) and***

Possible solutions?

- Work to make sure inmates aware of NCPLS post-conviction review
- Technology – easily ascertain prior MARs, existence of procedural bars
- Screening – regional pro se law clerks?